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MARRONE

Joseph M. Marrone, Esquire | Christopher M. Marrone, Esquire | Brian M. Marchese, Esquire

Admitted in PA, NJ & NY

Admitted in PA & NJ
(Of Counsel)

Admitted in PA & NJ

August 15, 2022

Via ECF

Honorable Lynne A. Sitarski, Magistrate Judge
United States District Court for the
Eastern District of Pennsylvania
3015 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: Tillery v. Eason
Docket No.: 20-cv-02675

Dear Magistrate Judge Sitarski:

This office represents Major Tillery in connection with a pending Amended Petition for Habeas Corpus which is pending before Judge Anita Brody and has been assigned to Your Honor for report and recommendation.

On Friday, August 12, 2022, the Respondents in this case filed a Motion for an extension of time for 90 additional days to respond to the Amended Petition. Petitioner is neither opposing nor supporting the Motion for an Extension of Time, but does ask that the Court take note of several factors in reaching a decision on the Motion:

- We appreciated the Court setting 30 days for the Commonwealth to respond, with the acknowledgment that the Commonwealth voluntarily opened prosecution and Homicide files, *following the Commonwealth's own initial review of these files as well as Mr. Tillery's pro se Reply brief.*
- Major Tillery has been incarcerated for almost 40 years and has always asserted his innocence. Mr. Tillery is 71 on September 5 and has chronic heart and other significant medical issues;
- Emanuel Claitt, who is the only prosecution to testify about the shootings, has died. His sworn statements, including via videotape, provide the factual predicate for Mr. Tillery's *pro se* petition asserting *Brady* and *Napue* claims.
- Another witness, corroborative to the Commonwealth case that Mr. Tillery was at the scene, also provided a sworn declaration to Mr. Tillery of Commonwealth misconduct in

200 South Broad Street • Suite 400 • Philadelphia, PA 19102

T: 215-732-6700 • F: 215-732-7660

Offices in Pennsylvania • New Jersey • New York

marronelaw.com

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securing the witness' testimony and suborning his perjury at Mr. Tillery's trial. That witness, Robert Mickens, is extremely ill, has been in and out of the hospital with repeated heart surgery, but remains otherwise ready to testify;

- As counsel for Mr. Tillery we welcomed the Commonwealth's motion for voluntary discovery last December and making the homicide files and prosecution files related to the prosecution of Mr. Tillery available;
- We were able to review the files in March of 2022. the Commonwealth provided us with a copy of the portion of the files requested – some 900 pages of reports, memos, photographs, and 3 tape recordings of witness statements;
- Given the substantial results from that voluntary discovery, weighed with the delay that would result if we moved forward to secure other, related files, the Commonwealth agreed it would try to secure, we moved forward to complete the Counseled, Amended petition, which was filed on June 2, 2022;
- Counsel has been informed by the Commonwealth that they are giving priority to Mr. Tillery's case.

We request that the Court take these factors into consideration in addressing the current Motion to Extend Time. Thank you for your attention to this matter.

Respectfully submitted,

Michael Pomerantz
Michael D. Pomerantz

cc: Shoshana Silverstein, Esquire